

**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF NEW YORK**

TAHEEN HAYES,

Plaintiff,

v.

**9:16-CV-1368
(TJM/CFH)**

T. DAHKLE, et al.,

Defendants.

**Thomas J. McAvoy,
Sr. U.S. District Judge**

DECISION & ORDER

This *pro se* action, brought pursuant to 42 U.S.C. § 1983, alleges that Defendants violated Plaintiff's First and Eighth Amendment rights while he was incarcerated at Coxsackie (New York) Correctional Facility. The Court referred the action to the Hon. Christian F. Hummel, United States Magistrate Judge, for a Report-Recommendation pursuant to 28 U.S.C. § 636(b) and Local Rule 72.3(c).

The Report-Recommendation, dated December 11, 2018, recommends that the Court grant the Defendants' motion for summary judgment. See dkt. # 71. Magistrate Judge Hummel finds that the Defendant failed to exhaust his administrative remedies on all claims except an Eighth Amendment sexual assault claim against Defendant C.O. Dahkle, and recommends that the Court dismiss Plaintiff's First Amendment retaliation claims, Eighth Amendment excessive force claims, and supervisory liability claims.

Magistrate Judge Hummel also recommends that the Court dismiss Plaintiff's Eighth Amendment claim against Defendant Dahkle on the merits.

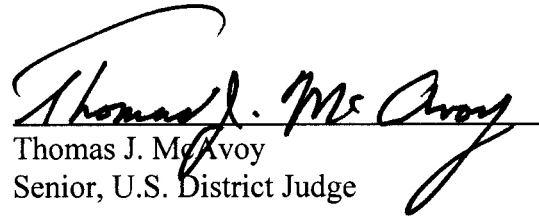
Plaintiff filed timely objections to the Report-Recommendation. See dkt. # 72. When objections to a magistrate judge's Report-Recommendation are lodged, the Court makes a "*de novo* determination of those portions of the report or specified proposed findings or recommendations to which objection is made." See 28 U.S.C. § 636(b)(1). After such a review, the Court may "accept, reject, or modify, in whole or in part, the findings or recommendations made by the magistrate judge. The judge may also receive further evidence or recommit the matter to the magistrate judge with instructions." Id.

Having reviewed the record *de novo* and having considered the issues raised in the Plaintiffs' objections, this Court has determined to accept and adopt the recommendation of Magistrate Judge Hummel for the reasons stated in the Report-Recommendation. The Court finds that Plaintiff failed to exhaust his administrative remedies with respect to all claims except his Eighth Amendment claim against Defendant Dahkle, and that no reasonable juror could find for Plaintiff on that claim.

It is therefore **ORDERED** that Plaintiff's objections to the Report-Recommendation of Magistrate Judge Hummel, dkt. # 72, are hereby OVERRULED. The Report-Recommendation, dkt. # 71 is hereby ACCEPTED and ADOPTED, and the Defendants' Motion for Summary Judgment; dkt. # 58 is hereby **GRANTED**. The Clerk of Court is directed to **CLOSE** the case.

IT IS SO ORDERED.

Dated: February 19, 2019


Thomas J. McAvoy
Senior, U.S. District Judge